

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF)
RULES AND REGULATIONS TO IMPLEMENT)
THE PROVISIONS OF 26 DEL. C. CH. 10)
RELATING TO THE CREATION OF A COM-) PSC REGULATION DOCKET NO. 49
PETITIVE MARKET FOR RETAIL ELECTRIC)
SUPPLY SERVICE (OPENED APRIL 27,)
1999; RE-OPENED JANUARY 7, 2003; RE-)
OPENED AUGUST 21, 2007))

ORDER NO. 7326

This 4th day of December, 2007, the Commission determines and Orders the following:

1. By PSC Order No. 7252 (Aug. 21, 2007), this Commission re-opened the captioned docket¹ and directed Commission Staff to review the July 2007 statutory amendments² to 26 Del. C. § 1014 regarding an electric utility's "net metering" obligations and report back with proposed revisions to § 8 of the Commission's *Rules for Certification and Regulation of Electric Suppliers* ("Electric Supplier Rules") relating to such obligations.³

2. By Memorandum dated November 26, 2007, Staff identified several complex provisions from the statutory amendments that require

¹By Order No. 7252 (Aug. 21, 2007), the Commission also opened Docket No. 07-219, *In the Matter of the Commission's Consideration of the "Net Metering" Standard Set Forth in 16 U.S.C. § 2621(d)(11) Related to the "Net Metering" of Customer-Generated Electric Supply*, but then, at Ordering ¶ 1, decided that no further proceedings in that docket were necessary.

²See 76 Del. Laws ch. 164 §§ 1-3 (July 24, 2007), amending 26 Del. C. §§ 1014(d), (d)(1) & (d)(2) and adding §§ 1014(e) & (f).

³ The Electric Supplier Rules were originally adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised by PSC Orders Nos. 7023 (Sept. 5, 2006) and 7078 (Nov. 21, 2006)).

interpretation including the definition of "NEG" (likely "net excess generation"), the treatment of Renewable Energy Credits ("RECs") associated with NEG, and the payment obligations arising from a supplier's transfer of excess RECs to the Green Energy Fund, all under 26 Del. C. § 1014(e)(1), as amended. With its Memorandum, Staff proposed certain revisions to § 8 of the Commission's *Electric Supplier Rules* to reflect its interpretation of the changes to the statutory "net metering" requirements.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 Del. C. §§ 362 & 1014(d) and 29 Del. C. § 10115, the Commission proposes to revise the "Net Energy Metering" provisions of its *Rules for Certification and Regulation of Electric Suppliers*, originally adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised by PSC Orders Nos. 7023 (Sept. 5, 2006) and 7078 (Nov. 21, 2006). A copy of the redlined version of the "Net Energy Metering" rules (i.e., § 8) is appended as Exhibit "A" to this Order.

2. That, pursuant to 29 Del. C. §§ 1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the Delaware Register of Regulations a copy of this Order; a copy of the redlined version of § 8 of the *Rules for Certification and Regulation of Electric Suppliers* (Exhibit "A"); and the Notice of Proposed Rule-Making, attached hereto as Exhibit "B." In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in The News Journal and the Delaware State News newspapers on January 3, 2008. The Secretary shall include proof of

such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the State Energy Office; (c) Delmarva Power & Light Company; (d) Delaware Electric Cooperative, Inc.; (e) all certificated electric suppliers; and (f) each person or entity who has made a timely request for advance notice of regulation-making proceedings. The Secretary shall also post an electronic version of this Order on the Commission's website under an appropriate heading.

3. That, pursuant to 29 Del. C. §§ 10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before February 6, 2008. Pursuant to 29 Del. C. § 10117, the Commission will conduct a public hearing on the proposed revisions to § 8 of the *Rules for Certification and Regulation of Electric Suppliers* on March 25, 2008 beginning at 10:00 AM at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

4. That, pursuant to 26 Del. C. § 502 and 29 Del. C. § 10116, Senior Hearing Examiner Ruth Ann Price is designated to supervise the comment period and to conduct the public hearing. Thereafter, Hearing Examiner Price shall organize, classify, and summarize the materials and comments and file a Report with the Commission with her recommendations concerning the proposed revisions to § 8 of the *Rules for Certification and Regulation of Electric Suppliers*. Hearing Examiner Price is specifically delegated the power, under 26 Del. C. § 102A, to determine the content and manner of any further public

notices that might be necessary or appropriate. Hearing Examiner Price may also conduct further proceedings, including additional hearings, as may be necessary or appropriate.

5. That William F. O'Brien, Deputy Attorney General, is designated Staff Counsel for this matter.

6. That, pursuant to 26 Del. C. §§ 114 & 1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they may be charged the costs of this proceeding.

7. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

(Redlined Version)

DELAWARE PUBLIC SERVICE COMMISSION

PSC REGULATION DOCKET NO. 49

RULES FOR

CERTIFICATION AND REGULATION

OF ELECTRIC SUPPLIERS

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8.0 Net Energy Metering

8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Annualized Period" means a period of 12 consecutive monthly billing periods ending at the discretion of the Customer, either December 31st or July 31st of each year or the nearest billing cycle. A Customer-generator's first Annualized Period begins on the first day of the first full monthly billing period after which the Customer-generator's facility is interconnected and is generating electricity.

"Avoided Cost of Wholesale Power" means the annual average locational marginal price ("LMP") of energy in the applicable energy supplier's transmission zone. This cost (including the method of calculation) can be obtained through the Electric Supplier's tariff as approved by the Commission.

"Customer-generator" means a residential, commercial, or industrial Customer that generates electricity on the Customer's side of the meter.

"Customer-generator Facility" means the equipment used by a Customer-generator to generate, manage, and monitor electricity. A Customer-generator facility typically includes an electric generator and/or an equipment package, as defined herein (also referred to as the "generating facility" or "generator").

"NEG" means Net Excess Generation.

"Net Metering" means a system of metering electricity in which the Electric Supplier credits a Customer-generator at the full applicable retail rate by classification for each kilowatt-hour produced by a renewable energy system installed on the Customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that Customer during an Annualized Period. At the end of the Annualized Period, any remaining credits are to be credited to the Green Energy Fund at a rate equal to the Electric Supplier's Avoided Cost of Wholesale Power.

8.2 General Provisions

8.2.1 Each Electric Supplier providing Electric Supply Service to Residential- and Non Residential, Small Commercial and Medium Commercial Customers shall offer these Retail Electric Customers the option of net energy metering if a Retail Electric Customer generates electricity at the Customer's premises, subject to all of the following requirements:

8.2.1.1 The Retail Electric Customer owns or operates the electric generation facility; with a capacity that:

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~~8.1.2 The facility uses renewable resources;~~

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~~8.1.3 The facility has a capacity of not more than 25 kilowatts~~

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8.2.1.2 Will not exceed 25 kW per DP&L meter for Residential Customers;

8.2.1.3 Will not exceed 2 MW per DP&L meter for Non Residential Customers;

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8.2.1.4 Is intended primarily to offset all or part of the Customer's own electricity requirements;

8.2.1.5 Uses as its primary source of fuel - solar, wind, hydro, a fuel cell powered by renewable fuels, or gas from the anaerobic digestion of organic material;

8.2.1.6 Is interconnected and operated in parallel with an Electric Supplier's transmission and distribution facilities; and

8.1.4 8.2.1.7 The facility is not used by the Retail Electric Customer to supply property other than the Customer's premises. 8.2.3 Net metering is the interconnection with Distribution Facilities through a single meter at the supplier's expense, that runs forward and backward in order to measure net energy flow during a billing period.

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8.3.1 An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the net-metering Customer, at the expense of the Electric Supplier.

8.3.2 Where a larger capacity meter is required to serve the Customer, or a larger capacity meter is requested by the Customer, the Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.

8.3.4 If, during any billing period, a Retail Electric Customer's facility generates more energy than that consumed by the Customer, the Electric Supplier will credit the Customer such additional power in the following billing period at least at the same price the Electric Supplier charged or would have charged the Customer under the contract. in kilowatt-hours (kWh), valued at an amount per kilowatt-hour: (1) equal to the sum of delivery service charges and supply service charges for Residential Customers but does not include the monthly Customer charge; and (2) the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non Residential Customers for any excess production of their generating facility that exceeds the Customer's on-site consumption of kWh in a billing period.

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8.4.1 Excess kWh credits shall be credited to subsequent billing periods to offset

a Customer's consumption in those billing periods until all credits are used or until the end of the annualized billing period.

8.4.2 Any unused credits at the end of the 12-month period shall be forfeited to the Electric Supplier at the Electric Supplier's Avoided Cost of Wholesale Power for use solely to augment existing funding for the Green Energy Fund.

8.4.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.

8.4.4 The Customer-generator retains ownership of Renewable Energy Credits ("REC") associated with electric energy produced and consumed by the Customer-generator. The RECs associated with NEG convey to the purchasing Electric Supplier.

8.4.5 Electric Suppliers shall provide net-metered Customers electric service at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not net-metering would be charged. Electric Suppliers shall not charge a net-metering Customer any stand-by fees or similar charges.

8.4.6 If a net metering Customer terminates its service with the electric provider (or switches electric providers), the electric provider shall treat the end of service period as if it were the end of the Annualized Period for any excess kWh credits at the electric provider's Avoided Cost of Wholesale Power.

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8.4.7 If the total generating capacity of all Customer-generation using net metering systems served by an electric utility exceeds 1 percent (1%) of the capacity necessary to meet the electric utility's aggregated Customer monthly peak demand for a particular calendar year, the electric utility may elect not to provide net metering services to any additional Customer-generators

8.4.5 Any requirements necessary to permit interconnected operations between the Retail Electric Customer's generating facility and the ~~EDC~~ Electric Supplier, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the Electric Supplier. An Electric Supplier's interconnection rules shall be developed by using the Interstate Renewable Energy Council's ("IREC") Model Interconnection Rules and best practices identified by the U.S. Department of Energy.

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8.6 Each Electric Supplier shall submit an annual net-metering report to the Commission 90 days after the annualized billing period. The report shall include the following information from the prior compliance year:

8.6.1 The total number of Customer-generator facilities;

8.6.2 The total estimated rated generating capacity of its net-metered Customer-generators;

8.6.3 The total estimated net kilowatt-hours received from Customer-generators;
and

8.6.4 The total estimated amount of energy produced by Customer-generators,
using a methodology approved by the Commission.

8.7 The Commission shall periodically review the impact of net-metering rules in this
section and recommend changes or adjustments necessary for the economic health of utilities.

E X H I B I T "B"

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**NOTICE OF PROPOSED RULE-MAKING TO AMEND
"NET ENERGY METERING" PROVISIONS OF ELECTRIC SUPPLIER RULES**

**TO: ALL RETAIL ELECTRIC SUPPLIERS IN DELAWARE, ALL DELAWARE
 RETAIL ELECTRIC CUSTOMERS WHO GENERATE ELECTRICITY AND
 OTHER INTERESTED PERSONS**

Since 1999, Commission-jurisdictional electric utilities and electric suppliers have been obligated to permit residential and smaller commercial customers to use limited capacity generators (powered by renewable resources) to "net meter" their electric production and consumption. See *Rules for Certification and Regulation of Electric Suppliers* ("Electric Supplier Rules"), § 8.0 (adopted by PSC Orders Nos. 7023 (Sept. 5, 2006) & 7078 (Nov. 21, 2006)).

In July of 2007, the General Assembly expanded that statutory command: (a) to widen the customer classes eligible for net metering;

(b) to increase permissible generator capacities for these additional classes of eligible customers; (c) to more particularly define the types of renewable generation eligible for net metering; and (d) to expand the "net metering" obligation beyond Commission-jurisdictional utilities. See 76 Del. Laws ch. 164 §§ 1-3 (July 24, 2007), amending 26 Del. C. § 1014.

As a result of these statutory changes, the Commission now proposes changes to the "net metering" section of its *Electric Supplier Rules*. You can review the proposed amendments at the Commission's office in Dover at the address below (and obtain copies for \$0.25 per page) or visit the Commission's Internet website located at <http://dep.sc.delaware.gov>, under PSC Order No. 7326 (Dec. 4, 2007). You can also review PSC Order No. 7326 and the proposed amendments in the January 2008 issue of the Delaware Register of Regulations.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed revisions to its "net metering" rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before **Wednesday, February 6, 2008**. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: Reg. Dckt. No. 49

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be

filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to karen.nickerson@state.de.us.

A Commission Hearing Examiner will conduct an Evidentiary Hearing to consider the proposed amendments and to receive comment and evidence concerning it on **Tuesday, March 25, 2008** at 10:00 a.m. at the address for the Commission listed above. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed "net metering" amendments on the basis of the evidence and information presented of record in this docket. The Commission is authorized to promulgate the proposed amendments under 26 Del. C. §§ 362 and 1014(d).

If you have questions about this proceeding, you can contact the Commission at 1-800-282-8574 (in Delaware only) or (302) 736-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to funmi.jegede@state.de.us. If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.